

FILED

2012 AUG -7 AM 11:23

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY



1 MARY CUMMINS
2 Plaintiff
3 645 W. 9th St. #110-140
4 Los Angeles, CA 90015
5 In Pro Per
6 Telephone: (310) 877-4770
7 Email: mmmaryinla@aol.com

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 MARY CUMMINS
12 Plaintiff

13 v.

14 AMANDA LOLLAR aka BAT
15 WORLD SANCTUARY an individual
16 person, BAT WORLD SANCTUARY
17 an unknown business entity, JOHN
18 DOES 1-10
19 Defendants

) Case No. CV11 08081 DMG (MANx)
)
) **PLAINTIFF'S MOTION TO**
) **QUASH DEFENDANTS' AMANDA**
) **LOLLAR, BAT WORLD**
) **SANCTUARY SUBPOENAS FOR**
) **PLAINTIFF'S MEDICAL**
) **RECORDS; DECLARATION OF**
) **MARY CUMMINS**
)
) **DISCOVERY MATTER**

) Complaint Filed: September 29, 2011
) Discovery Cut off: September 7, 2012
) Pretrial Conf. Date: October 9, 2012
) Trial Date: November 6, 2012

Court: Raybal 580
10:00 a.m. September 4, 2012
Judge Margaret Nagle

21 Plaintiff Mary Cummins ("Plaintiff") hereby opposes Defendants' Amanda Lollar
22 and Bat World Sanctuary subpoenas for Plaintiff's medical records.
23

24 **I. INTRODUCTION**

25 Plaintiff sued Defendants Amanda Lollar, Bat World Sanctuary and John Does 1-10,
26 asserting claims for defamation, defamation per se, interference with business
27

1 relations, interference with prospective economic advantage and infliction of
2 emotional distress.

3 Defendants Amanda Lollar, Bat World Sanctuary sent subpoenas requesting all
4 medical records of Plaintiff Mary Cummins to Plaintiff's Doctors Dr. Samuel
5 Berkman, Dr. Resa Lee Oshiro, Thomas Marinaro D.C., ("Doctors") on July 17, 2012
6 and July 25, 2012 (Exhibits 1).

7 Defendants' subpoenas are defective as there was no Notice of Subpoena sent to
8 Plaintiff pro se, subpoenas are not signed and they are overly broad asking for ALL
9 medical records regardless of cause or date. Furthermore the medical records are
10 privileged. The request is an invasion of privacy made for harassment purposes only
11 and are not related to the claims of this case. Plaintiff brings only a "garden-variety"
12 claim for emotional distress damages.

13

14 **II. FACTUAL BACKGROUND**

15

16 Plaintiff attended an internship at Bat World Sanctuary June 2010 (Exhibit 2,
17 Declaration of Plaintiff Mary Cummins). Plaintiff witnessed Defendant Amanda Lollar
18 commit animal cruelty, animal neglect, violate the health department regulations,
19 violate the Animal Welfare Act, violate the Texas Parks & Wildlife Department
20 regulations and other disturbing things.

21

22 Plaintiff left the internship early, returned to California and reported Defendant to
23 authorities. In retaliation Defendant Amanda Lollar and John Does defamed and
24 libeled Plaintiff on the Internet.

25

26 September 29, 2011 Plaintiff filed suit against Defendants for claims of defamation,
27 defamation per se, interference with business relations, interference with prospective
28 economic advantage and infliction of emotional distress.

29

30

1 **III. LEGAL ANALYSIS**

2
3 **A. Defendants' subpoenas are defective**

4 Defendants' subpoenas were not signed. A notice of subpoena was not sent to
5 Plaintiff. They are not specific and request information that is overly broad. For
6 instance Dr. Samuel Berkman has been Plaintiff's General Practitioner for over 20
7 years. ALL of her medical treatments for the last 20 years would be overly broad. Dr.
8 Oshiro is Plaintiff's orthopedic surgeon whom she's only visited twice for a back
9 injury. Dr. Marinaro is a chiropractor. None of these doctors treat emotional distress.
10 Plaintiff was not treated by these doctors for emotional distress. Therefore the
11 subpoenas are defective on their face.

12 **B. Defendants' subpoenas seek information that is privileged. The subpoenas are**
13 **an invasion of privacy and are sought for harassment purposes only.**

14 Plaintiff has not made any claims for bodily injury. Plaintiff only brings a "garden-
15 variety" claim for emotional distress damages. Plaintiff does not intend to rely on those
16 records or on testimony by a medical or psychiatric expert to support her claim.
17 Consequently, she has not waived this privilege by putting her medical or mental
18 condition at issue. Fitzgerald v. Cassil (N.D. Cal 2003) 216 F.R.D. 632, 635, the court
19 decided that the plaintiff's medical records are not relevant because the emotional
20 distress claim that was filed did not include any claim for bodily injuries. Also, EEOC
21 v. Lexus of Serramonte, (N.D. Cal. 2006) "Ms. Wei's medical records are privileged
22 by her right to privacy under California and federal law, and she brings only a 'garden-
23 variety' claim for emotional distress damages and she does not intend to rely on those
24 records or on testimony by a medical or psychiatric expert to support her claim.
25 Consequently, she has not waived this privilege by putting her medical or mental
26 condition at issue."

27 ///

1 **IV. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests that the Court strike's
3 Defendants' subpoenas for Plaintiff's medical records.

4
5 Respectfully submitted,

6 

7 Mary Cummins, Plaintiff

8 Dated: August 4, 2012

9 645 W. 9th St. #110-140

10 Los Angeles, CA 90015

11 In Pro Per

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF PLAINTIFF MARY CUMMINS

I, MARY CUMMINS, declare as follows:

1. I am Mary Cummins Plaintiff in pro per. I make this declaration on my personal knowledge of the facts set forth herein.
2. Attached to **PLAINTIFF'S MOTION TO QUASH DEFENDANTS AMANDA LOLLAR, BAT WORLD SANCTUARY SUBPOENAS FOR PLAINTIFF'S MEDICAL RECORDS** as Exhibit 1 are true and correct copy of subpoenas sent to my doctors Dr. Samuel Berkman, Dr. Resa Lee Oshiro and Thomas Marinaro.
3. September 29, 2011 I filed suit against Defendants Amanda Lollar, Bat World Sanctuary and John Does 1-10 for defamation, defamation per se, interference with business relations, interference with prospective economic advantage and infliction of emotional distress.
4. I did not receive a notice of subpoena.
5. The subpoenas are not signed and were served by mail, not in person.
6. The subpoenas ask for ALL of my medical records regardless of date or claim.
7. Dr. Samuel Berkman has been my General Practitioner for over 20 years.
8. Dr. Resa Less Oshiro is my orthopaedic surgeon. I've only seen her for my back injury.
9. Thomas Marinaro is my chiropractor.
10. I've never seen any of these physicians for "emotional distress."
11. I have brought claim only for "garden-variety" emotional distress.
12. I do not intend on having my doctors be witnesses in this case. I do not intend to rely on any of their medical records in this case.
13. I was an intern at Bat World Sanctuary June 2010.
14. I witnessed Defendant Lollar trying to perform surgery on a bat when she is not a veterinarian and hasn't even gone past the ninth grade.

Exhibit 5 1

- 1 15. I witnessed Defendant Lollar committing animal cruelty, animal neglect,
- 2 violations of the Animal Welfare Act, violations of the Health Code besides
- 3 other things.
- 4 16. After I returned home I reported Defendants to authorities.
- 5 17. In retaliation they began a smear campaign against me on the Internet.
- 6 18. Defendants have committed defamation, defamation per se and have injured my
- 7 business.
- 8 19. Defendants have caused me to suffer "garden-variety" emotional distress.

9 I, declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11 Executed on August 4 2012 at Los Angeles, California.

12 By: Mary Cummins
13 MARY CUMMINS

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

MARY CUMMINS

Plaintiff

v.

AMANDA LOLLAR, ET AL.

Defendant

Civil Action No. CV11-8001 DMC

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Resa Lee Oshiro

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A...

Place: Bosco Legal Services, Inc. 9455 Magnolia Ave. Riverside, CA 92503 951-353-8281

Date and Time: 08/21/2012 10:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 07/17/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Amanda Lollar, Bat World S Stephen M. MacPhail, who issues or requests this subpoena, are:

Bragg & Kuluva 555 S. Flower St. #600 Los Angeles, CA 90071 213-612-5335

Exhibit 2 7

(v. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

MARY CUMMINS

Plaintiff

v.

AMANDA LOLLAR, ET AL.

Defendant

Civil Action No. CV11-8081 DMG

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Dr. Samuel A. Berkman, M.D.

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A...

Place: Bosco Legal Services, Inc. 9455 Magnolia Ave. Riverside, CA 92503 951-353-8281 Date and Time: 08/21/2012 10:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 07/17/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Amanda Lollar, Bat World S Stephen M. MacPhail, who issues or requests this subpoena, are:

Bragg & Kuluva 555 S. Flower St. #600 Los Angeles, CA 90071 213-612-5335

AO 88D (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

MARY CUMMINS

Plaintiff

v.

AMANDA LOLLAR, ET AL

Defendant

Civil Action No. CV11-8081 DMG

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Thomas Marinaro, D.C., Pain Relief Center

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A...

Place: Bosco Legal Services, Inc. 9455 Magnolia Ave. Riverside, CA 92503 951-353-8281 Date and Time: 08/29/2012 10:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 07/25/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Amanda Lollar, Bat World S Stephen M. MacPhail, Esq., who issues or requests this subpoena, are:

Bragg & Kuluva 555 S. Flower St. #600 Los Angeles, CA 90071 213-612-5335

ATTACHMENT "A"

Any and all documents and medical records pertaining to the examination, care diagnosis and treatment of the patient, including but not limited to all office, emergency room, inpatient and outpatient charts and records, nurse's notes, patient questionnaires, operation reports, radiological reports, physical therapy and rehabilitation records, including all descriptions of exercises prescribed; any and all records regarding prescriptions, including the type of medication, and dosage, and any other information available regarding the prescription(s); sign-in sheets, and documentation which indicate date(s) and time(s) of patient appointments, all regardless of date.

Patient: Mary Cummins

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE BY MAIL
(FRCivP 5 (b)) or
(CCP 1013a, 2015.5) or
(FRAP 25 (d))

I am Plaintiff in pro per whose address is 645 W. 9th St. #110-140, Los Angeles, California 90015-1640. I am over the age of eighteen years.

I further declare that on the date hereof I served a copy of:

**PLAINTIFF'S MOTION TO QUASH DEFENDANTS AMANDA LOLLAR,
BAT WORLD SANCTUARY SUBPOENAS FOR PLAINTIFF'S MEDICAL
RECORDS**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at 645 W. 9th St. #110-140, Los Angeles, CA 90015-1640.

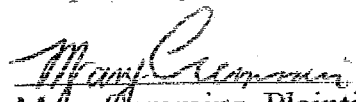
Stephen M. MacPhail
Bragg & Kuluva
555 S. Flower St., #600
Los Angeles, CA 90071

I also faxed a copy to Stephen M. MacPhail at (213) 612-5712.

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

Executed this day, August 4, 2012, at Los Angeles, California

Respectfully submitted,


Misty Cummins, Plaintiff
Dated: August 4, 2012
645 W. 9th St. #110-140
Los Angeles, CA 90015
In Pro Per